



November 7, 2001

Ms. Pamela Smith
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2001-5160

Dear Ms. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 154589.

The Texas Department of Public Safety (the “department”) received three requests for crime laboratory information relating to several specified case numbers. You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you raise and have reviewed the representative samples of information you submitted.¹ We also received comments from the requestor.²

Initially, we address the department’s contention that these requests should be addressed to another governmental body. You inform this office that the information at issue relates to evidence that the Bastrop Police Department submitted to the department’s crime laboratory. You believe that, as the evidence remains the property of the submitting law enforcement agency, any information concerning that evidence also is the property of the submitting agency. You ask “permission to advise this requestor that his request must be directed to the Bastrop Police Department.” You may not do so. Under chapter 552 of the Government Code, “virtually all information in the physical possession of a governmental body is ‘public information’ subject to [chapter 552].” Open Records Decision No. 549 at 4 (1990)

¹This letter ruling assumes that the submitted representative samples of information are truly representative of the responsive information as a whole. This ruling neither reaches nor authorizes the department to withhold any responsive information that is substantially different from the submitted information. See Gov’t Code § 552.301(e)(1)(D); Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

²See Gov’t Code § 552.304 (providing that interested person may submit written comments stating why information at issue in request for attorney general decision should or should not be released).

(applying statutory predecessor); *see also* Gov't Code § 552.002(a)(1) (defining "public information"). Moreover, the fact that a request for information might be more appropriately directed to a different governmental body does not mean that it can be dismissed by a governmental body to which it is properly directed. Attorney General Opinion JM-266 at 3 (1984). Therefore, to the extent that the department is in possession of information to which the requestor seeks access, it must respond to these requests for information.

Next, we address the requestor's assertion that the department previously released some of the information at issue. Attached to the requestor's comments is a copy of one of the documents that the department seeks to withhold. If information has been released voluntarily to any member of the public, that information may not be withheld from further disclosure, unless its public release is expressly prohibited by law. *See* Gov't Code § 552.007; Open Records Decision No. 518 at 3 (1989). You do not inform this office of any law, nor are we aware of any law, that expressly prohibits public disclosure of the requested information. On the other hand, a governmental body is not precluded from invoking an exception to the further public disclosure of information that has been released on a limited basis through no official action, and against the wishes and policy of, the governmental body. *See* Open Records Decision No. 376 at 2 (1983); *see also* Open Records Decision No. 387 at 3 (1983) (stating that information that is not voluntarily released by a governmental body, but nevertheless comes into another party's possession, is not henceforth automatically available to everyone). Whether any of the information in question has been officially released to the public presents a fact issue. This office cannot resolve disputes of fact in the opinion process. *See* Open Records Decision Nos. 592 at 2 (1991), 552 at 4 (1990), 435 at 4 (1986). Where a fact issue cannot be resolved as a matter of law, we must rely on the facts alleged to us by the governmental body requesting our opinion, or upon those facts that are discernible from the documents submitted for our inspection. *See* Open Records Decision No. 552 at 4 (1990). As it does not appear to this office that the department has officially released any of the requested information, we will address your exception to the disclosure of this information. We note, however, that if the department has voluntarily disclosed any of this information to a member of the public, then the department may not now withhold such information under section 552.108. *See* Open Records Decision No. 177 (1977) (section 552.108 is discretionary exception that governmental body may waive).

Section 552.108 of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body that raises section 552.108 must reasonably explain, if the information in question does not supply an explanation on its face, how and why section 552.108 is applicable to the information. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). You state that the Capital Litigation Division of this office has informed the department that the release of the requested information at this time would interfere with a pending appeal in a criminal case. You also inform us that the

requested information pertains to two prosecutions in which the defendant has been indicted but not yet tried. Based on these representations, we conclude that the release of the requested information would interfere with the investigation, detection, or prosecution of crime. See Gov't Code § 552.108(a)(1); *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases); Open Records Decision No. 372 at 4 (1983) (stating that where an incident allegedly involving criminal conduct remains under active investigation or prosecution, section 552.108 may be invoked by any proper custodian of related information). Therefore, the department may withhold the requested information under section 552.108(a)(1).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

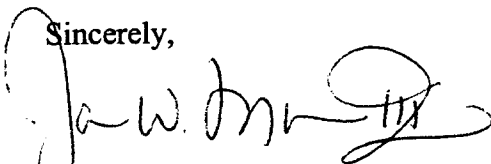
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in dark ink, appearing to read 'J.W. Morris III', with a large, stylized flourish at the end.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 154589

Enc: Submitted documents

c: Mr. David F. Fisher
1831 Upper Elgin River Road
Elgin, Texas 78621
(w/o enclosures)